

Illinois Retailers' Occupation Tax is imposed upon gross receipts from the sale of tangible personal property to end-users and no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, the cost of materials used, labor costs, or any other expense whatsoever. See 86 Ill. Adm. Code 130.410. (This is a GIL).

December 10, 2002

Dear Xxxxx:

This letter is in response to your letter dated September 25, 2002 that we received on October 7, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am a tax preparer for a large service business whose primary business activity is leasing out large 300-600 lb. bulk tanks which we install at a customers location. These tanks are leased to the majority of our customers for the purpose of housing the Co2 used to carbonate their fountain beverages. Our customers sign a contract with an average term of 60 months and for a fixed monthly rate receive weekly/monthly fills of Co2, as needed, with a set maximum annual poundage. The charge for the lease is reported to the state as a taxable transaction. In accordance with the lease there are also additional fees that the customers are liable for.

1. Emergency fills - a set fee charged to the customer if an unscheduled fill is required and a driver needs to deviate from his previously planned route to service the customer. This is usually caused by an increase in business due to a special activity or special promotion run by the business.
2. Hazmat Fee - a small set fee charged to the customer to help cover the costs of hazardous materials handling, training, and licensing.
3. Fuel Surcharge - a fee charged occasionally due to increases in the cost of motor vehicle fuel.
4. Delivery Fee - a set fee charged for delivery.

All these fees are outlined in the customers contract. Can you please provide me with a written ruling regarding the taxability of the items above? If you need any additional

information please contact me at the number below. Thank you in advance for your prompt attention to this matter.

For purposes of this response, we assume that your customers do not have the option of furnishing and providing their own tanks. If this is the case, the "charge for the lease" that you report as a taxable transaction is actually the selling price for your CO2 product, and the amount attributable to the tanks is part of the selling price of the product. As such, there is an inseparable link between the sale of the gas and the furnishing of the storage tanks, with the charge for the latter taxable because it constitutes an undividable element of your cost of selling your product. If your CO2 customers were not required to rent your tanks, you would owe Use Tax upon your cost of the tanks that you rent, and your rental charges to your customers for the tanks would not be taxable. See Liquid Air Corporation v. Johnson 240 Ill. App. 3d 722 (First Dist. 1992).

Illinois Retailers' Occupation Tax (sales tax) is imposed upon gross receipts from the sale of tangible personal property to end-users and gross receipts is defined to mean all the consideration received by sellers valued in money whether received in money or otherwise, but not including the value of or credits given for like kind traded-in property. In computing Retailers' Occupation Tax liability, no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, the cost of materials used, labor costs, or any other expense whatsoever. See 86 Ill. Adm. Code 130.410, enclosed.

In the context of selling CO2 as set out in your letter, the emergency fill charges, hazmat fees and fuel surcharges are costs of doing business subject to the tax. The question of whether delivery fees or charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such delivery charges but upon whether the charges are included in the selling prices of the property or are agreed to by purchasers and retailers separately from the selling price of the property.

The best evidence that delivery charges were agreed to separately and apart from selling prices, are separate and distinct contracts for freight or shipping. Alternatively, documentation in the records of sellers that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice.

To the extent that delivery charges are not reflective of the costs of delivery and such charges exceed the costs of shipping, transportation or delivery, the excess charges are subject to tax. See section 130.415(d), enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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